

REMARKS

Claims 21 to 30 are added, and therefore claims 11 to 30 are pending.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

The drawings were objected to as to certain formalities. Replacement drawings have been included with this response. The Figures have been corrected as to the minor formalities, as suggested. No new matter is introduced and support is found in the present application. Approval and entry are respectfully requested.

Claims 11, 13, 15, and 20 were rejected under 35 U.S.C. § 103(a) as unpatentable over Andres, U.S. Patent No. 6,236,922 in view of Mattes et al., U.S. Patent No. 5,014,810.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 11 includes the feature of “using a forward displacement as the at least one signal; comparing the at least one signal to at least one threshold value surface, which is set as a function of a velocity decrease and a deceleration.” In this regard, the Office cites the “Andres” reference at col. 3, lines 4 to 22, but this section merely states that:

[The] calculation of the first velocity begins when the **acceleration** signal **exceeds a threshold deceleration level**. This threshold deceleration level may be adjusted for various vehicle models as desired. The calculation of the second velocity begins, and the calculation of the first velocity *is concluded*, when two conditions are satisfied. The first condition is that the first **velocity** has reached a **threshold level**. The second condition is either that a significant **deceleration peak** has been reached in the filtered **acceleration** signal, or that an approximation has been made that the **displacement** of the occupant has reached a certain **displacement threshold**.

(“Andres” reference, col. 3, lines 4 to 22) (emphasis added).

Claim 11 clearly provides for a “comparing” between “a forward displacement” and a value “set as a function of a velocity decrease and a deceleration.” This is not disclosed or suggested by the “Andres” reference. In particular, the “Andres” reference refers to multiple measurements. First, an *acceleration* is measured against a threshold *deceleration* level. Acceleration is not “a forward displacement,” and a deceleration threshold is not “a function of a velocity decrease and a deceleration.” Second, a first *velocity* and a threshold level (it is assumed to be a velocity threshold) are measured. A velocity is not “a forward displacement” and a velocity threshold is not “a function of a velocity decrease and a deceleration.” Third, an *acceleration* is measured for a significant *deceleration peak*. Acceleration is not “a forward displacement,” and a deceleration peak is not “a function of a velocity decrease and a deceleration.” Fourth, a displacement of the occupant is measured against a displacement threshold. A displacement threshold is not “a function of a velocity decrease and a deceleration.” In short, the “Andres” reference may refer to several measurements, but none of those measurements disclose or even suggest the above-discussed features of claim 11.

As to the secondary “Mattes” reference, it does not cure – and was not asserted to cure -- the deficiencies of the “Andres” reference.

Accordingly, claim 11 is allowable, as are its dependent claims 13, 15, and 20.

Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”), in further view of U.S. Patent No. 6,459,366 (“Foo”), and in further view of U.S. Patent Application No. 2003/0197356 (“Fisher”).

Claims 16 to 19 were also rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,236,922 (“Andres”) in view of U.S. Patent No. 5,014,810 (“Mattes”),

in further view of U.S. Patent No. 6,459,366 ("Foo"), and in further view of U.S. Patent Application No. 2003/0197356 ("Fisher").

Claims 12 and 16 to 19 depend from claim 11, and are therefore allowable for essentially the same reasons, since the "Foo" and "Fisher" references do not cure – and are not asserted to cure -- the deficiencies of the "Andres" reference, as explained above as to claim 11.

Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,236,922 ("Andres") in view of U.S. Patent No. 5,014,810 ("Mattes"), and in further view of U.S. Patent No. 6,549,836 ("Yeh").

Claim 14 depends from claim 11, and is therefore allowable for essentially the same reasons, since the "Yeh" reference does not cure – and is not asserted to cure -- the deficiencies of the "Andres" reference, as explained above as to claim 11.

New claims 21 to 30 do not add any new matter and are supported by the present application, including the specification. Claims 21 to 30 depend from claim 11, and are therefore allowable for the same reasons.

Accordingly, claims 11 to 30 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all pending claims 11 to 30 are in condition for allowance. It is therefore respectfully requested that the rejections and any objections be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Dated: 2/6/2009

Respectfully submitted,

By: 

Gerard A. Messina
(Reg. No. 35,952)

One Broadway
New York, NY 10004
(212) 425-7200

CUSTOMER NO. 26646